TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1126~~. 684

THE TOWN OF ELMWOOD, PLAINTIFF IN ERROR,

vs.

AMOS W. DOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 22, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1026.

THE TOWN OF ELMWOOD, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Romanzo Bunn, district judge of the United States for the western district of Wisconsin, on Tuesday, the twenty-seventh day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the one hundred and twelfth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Be it remembered that on the twenty-eighth day of September, 1885, came the plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his *præcipe* for a writ of summons, and also, at the same, filed his bond for costs in said above-entitled cause, which said *præcipe* and bond are, respectively, in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court of the United States. October Term, A. D. 1885.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Ass't. Damages, $75.000.00.

Wm. H. Bradley, Esq., clerk of said court:

Please issue summons in cause in an action of trespass on the case on promises, in damages of seventy-five thousand dollars, and oblige,

Yours, &c., THOMAS S. McCLELLAND AND GEORGE A. SAUNDERS, *Pl'ff's Att'ys.*

Sept. 28th, 1885.

Endorsed: Filed Sept. 28, 1885. Wm. H. Bradley, clerk.

3 *Bond for Costs.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. October Term, A. D. 1885.

AMOS W. DOWS

vs.

THE TOWN OF ELMWOOD, Peoria County, Ills.

In assumpsit.

I enter myself security for costs in this cause and promise to pay

all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the pl'ff of any of costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 28th day of September, A. D. 1885.

GEORGE A. SAUNDERS.

Endorsed: Filed Sept. 28th, A. D. 1885. Wm. H. Bradley, clerk.

4 Afterwards, to wit, on the twenty-first day of October, 1885, came the defendant, by its attorneys, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States. December Term, A. D. 1885.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

Ass't.

Now comes the above-named defendant, by Hopkins & Hammond, its attorneys, waives service of process, and enters its appearance in said cause this 20th day of October, A. D. 1885.

HOPKINS & HAMMOND,
Att'ys for said Def't.

Endorsed: Filed Oct. 21st, '85. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-sixth day of October, 1885, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

5 *Declaration.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States. December Term, A. D. 1885.

Amos Dows, who is a citizen of Massachusetts, the plaintiff in this suit, by Thomas S. McClelland and George A. Sanders, his attorneys, complains of the Town of Elmwood, a body corporate, organized and existing under and by virtue of the laws of the State of Illinois and located in the county of Peoria, in said State of Illinois, and within the district aforesaid, the defendant, in a plea of trespass on the case on promises:

For that whereas heretofore, to wit, on the 27th day of April, A. D. 1869, at the district aforesaid, the said defendant, by the name and style of Supervisor of Elmwood Township, made, executed, and delivered its certain four hundred and two (402) instruments, partly printed and partly in writing, commonly called coupons or interest notes or interest warrants, each for the sum of one hundred dollars, and payable to the bearer thereof, as they severally became due, at Springfield, Illinois, at the office of the State treasurer; which said coupons and each and every of them were signed by S. F. Jones, the supervisor of said The Town of Elmwood, and S. M. Farrar, the town clerk of said town.

And plaintiff avers that said instruments or coupons or interest notes or warrants were numbered and became due and payable as follows, to wit:

6 Seventeen (17) of said coupons were numbered from thirty-nine (39) to forty three (43), both inclusive, and from fifty-nine (59) to seventy (70), both inclusive, and became due and payable July 1, 1873.

Thirty-two (32) of said coupons were and are numbered from thirty-nine (39) to seventy (70), both inclusive, and became due and payable July 1, 1874.

Two hundred and ninety-seven (297) of said coupons were and are numbered and became due and payable as follows, to wit: Thirty-three (33), numbered from thirty-nine (39) to seventy (70), both inclusive, and seventy-five (75) became due and payable on the first day of July in each and every of the following years, to wit, A. D. 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883, respectively, and fifty-six (56) of said coupons were and are numbered and became due and payable as follows, to wit, twenty-eight (28) numbered from thirty-nine (39) to fifty-three (53), both inclusive, fifty-nine (59) to seventy (70), both inclusive, and seventy-five (75) became due and payable on the first day of July in each and every of the following years, to wit, A. D. 1884 and 1885, respectively.

And plaintiff avers that each and every of said coupons or interest warrants were and are alike and *fac-simile* of each other and similar in every respect, except as to their numbers and dates of maturity, and except as to their numbers and dates of maturity, said coupons and each and every of them were and are similar to said coupon number thirty-nine (39), due and payable July 1, 1885, which is in words and figures as follows, to wit:

7 "$100. No. 39.

"*Elmwood Township Railroad Bond.*

"Interest warrant.

"Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer July 1, 1885, one hundred **(15)** dollars, at the office of the State treasurer, Springfield, Illinois.

"S. M. FARRAR, *Clerk.*
"S. F. JONES, *Supervisor.*"

And plaintiff avers that said coupons and each and every of them were cut from the thirty-three (33) bonds of said The Town of Elmwood, bearing equal and similar numbers to said coupons, to wit, from bonds numbered thirty-nine (39) to seventy (70), both inclusive, and seventy-five (75), and stand for and represent the annual interest due and payable on said bonds, as above specified, respectively, and that said thirty-three (33) bonds of said defendant were duly executed and delivered on, to wit, said April 27, 1869, and were, with said several coupons attached, respectively, signed by said S. F. Jones, as supervisor of said town, and said Samuel M. Farrar, town clerk of said town; that said bonds were and are similar and *fac-simile* of each other and alike in every particular, except as to the numbers thereof, and except as to the numbers thereof were and are similar to said bond number forty (40), which is in words and figures as follows, to wit:

"UNITED STATES OF AMERICA, *State of Illinois:*

8 "Number 40. Dollars, $1,000.

"*Elmwood Township Railroad Bond.*

"Know all men by these presents that the Township of Elmwood, in the county of Peoria and State of Illinois, acknowledges itself to owe and be indebted unto the bearer hereof the sum of one thousand dollars, payable on the 1st day of July, A. D. 1889, with interest thereon at the rate of ten per centum per annum, payable annually, on the 1st day of July in each year, at the office of the State treasurer, in Springfield, Illinois, upon presentation and delivery of the proper coupons hereunto annexed until the payment of the principal sum. This bond is issued under and by virtue of a law of the State of Illinois entitled An act to incorporate the Dixon, Peoria and Hannibal Railroad Company, approved March 5th, 1867, and amended and approved March 9th, 1869, and also in virtue of an act entitled 'An act to legalize a **($1,000)** certain election therein named, approved April 17, 1869,' authorizing the several townships, cities, or incorporated towns in the counties through which the road may be located to subscribe and take stock in the Dixon, Peoria and Hannibal Railroad Company to an amount not exceeding one hundred thousand dollars to each township, city, or incorporated town, and to pay for the same in the bonds of said township, city, and town, coming due twenty years from the date of their issue and bearing interest at a rate not exceeding ten per cent. per annum,
9 payable annually, and in accordance with the vote of the electors of said township at the special election held March 16th, A. D. 1869, in accordance with the provisions of said act, and the faith of the township of Elmwood is hereby pledged for the payment of the principal sum and interest thereon as aforesaid.

"In testimony whereof the supervisor and clerk of said township of Elmwood have subscribed this bond this 27th day of April, one thousand eight hundred and sixty-nine.

"SAMUEL M. FARRAR, *Clerk.*
"S. F. JONES, *Supervisor.*"

And plaintiff avers that each and every of said bonds were duly registered in the office of the auditor of public accounts of said State of Illinois, as will more fully and at large appear from the certificate of registry on the back of said bond number forty, being similar to the certificate on the backs of each and every of said bonds, to wit:

"AUDITOR'S OFFICE,
"SPRINGFIELD, ILLINOIS, *March 15th*, 1870.

"I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns,' in force April 16, 1869.

"In testimony whereof I have hereunto subscribed my
10 name and affixed the seal of my office the day and year aforesaid.

"[SEAL.] C. E. LIPPINCOTT,
"*Auditor P. A.*"

And plaintiff avers that each and every of said bonds, with said coupons attached thereto, were registered in said office of the auditor of public accounts, to wit, on March 15, 1878, by virtue and in pursuance of the affidavit or certificate of said S. F. Jones, supervisor of said The Town of Elmwood, duly sworn to and filed in said auditor's office on the 15th day of March, A. D. 1869; which said certificate, with the endorsements thereon, were and are in words and figures as follows, to wit:

"STATE OF ILLINOIS,
"COUNTY OF PEORIA, *February 15th*, 1870.

"To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

"SIR: I herewith transmit to you, for registration in your office, under the provisions of the act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns,' in force April 16th, 1869, the following bonds, being seventy-five in number, dated April 27th, 1869, amounting to ($75,000) seventy-five thousand dollars, payable on the 1st day of July, 1889, and bearing interest at the rate of ten per centum per annum, payable annually.

These bonds are issued by the town of Elmwood, in the county
11 of Peoria and State of Illinois, to the bearer and in aid of the Dixon, Peoria and Hannibal R. R. Co. under and by authority of the provisions of act to incorporate the Dixon, Peoria and Hannibal Rail R. Co., approved March 5th, 1867, amended March 9th, 1869; also an act to legalize a certain election therein named, approved April 17th, 1869, and by a vote of the people of said township at an election held on the 16th March, 1869; and I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act in force April 16th, 1869, required to be done to authorize the registration of these bonds and to entitle them to

the benefits of the said act last referred to have been fully complied with, to the best of my knowledge and belief.

"S. F. JONES,
"*Supervisor of Elmwood.*

"PEORIA COUNTY:

"Subscribed and sworn to by the said S. F. Jones before me this 15th day of February, A. D. 1870.

"[NOTARIAL SEAL.] SAMUEL M. FARRAR,
"*Notary Public.*"

Which said certificate was and is endorsed as follows, to wit:

"State of Illinois, auditor's office. Certificate of S. F. Jones, supervisor of Elmwood township, Peoria county, Illinois. Registration of bonds issued in aid of the Dixon, Peoria and Hannibal R. R.
12 Co. by Elmwood township, Illinois. Filed March 15th, 1870. C. E. Lippincott, auditor public accounts."

And plaintiff further avers that said bonds and each and every of them, together with the coupons attached thereto, were issued under and by virtue of the several acts of the Legislature of the State of Illinois recited on the face of said bonds, and also by virtue and in pursuance of said special election held on, to wit, March 16, A. D. 1869, as recited on the face of said bonds and each of them, and plaintiff avers said amended act of March 9th, A. D. 1869, is in words and figures as follows, to wit:

"An act to amend the charter of the Dixon, Peoria and Hannibal Railway Company.

"SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That an act entitled 'An act to incorporate the Dixon, Peoria and Hannibal Railroad Company,' approved March 5, 1867, be so amended as to authorize the several counties in which any part of said road may be hereafter located to subscribe or make donations under the provisions of said act to the capital stock of said company in any amount not exceeding two hundred thousand dollars for any such county, and that the townships, cities, and incorporated towns in any such county be, and are hereby, authorized to subscribe or make donations under the provisions of said act to the capital stock of said company in any amount
13 not exceeding one hundred thousand dollars for any such township, city, or incorporated town.

"SECTION 2. This act shall be in force from and after its passage.

"Approved March 9, 1869."

And plaintiff further avers that said legalizing act mentioned in said bonds and each and every of them is in words and figures as follows, to wit:

"An act to legalize a certain election therein named.

"SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That a certain election held in the township of Elmwood, in Peoria county, on the sixteenth day of

March, anno Domini one thousand eight hundred and sixty-nine, at which a majority of the legal voters in said township, in special town meeting, voted to subscribe for and take forty thousand dollars of the capital stock of the Dixon, Peoria and Hannibal Railroad Company over and above the thirty-five thousand dollars which was, on the same day, subscribed for and taken in accordance with the provisions of the charter of said company, is hereby legalized and confirmed and is declared to be binding upon said township; and the said forty thousand dollars, when subscribed according to the conditions of said vote, may be collected from said township in the same manner as if the said subscription had been made under the provisions of said charter.

"SECTION 2. This act shall be deemed a public act, and shall take effect and be in force from and after its passage.

"Approved April 17, 1869."

14 And plaintiff further avers that said coupons sued on herein were cut from and are a part of the issue of forty thousand dollars voted by said defendant at said special election held in said town on said March 16th, A. D. 1869, in addition to the thirty-five thousand dollars voted by said town under said act of March 5th, A. D. 1867, thereby making a total subscription to the capital stock of said Dixon, Peoria and Hannibal Railroad Company by said The Town of Elmwood of seventy-five thousand dollars for and on account of which stock was duly issued to said town; and plaintiff avers that on, to wit, on the first day of June, A. D. 1872, he became the purchaser and owner of said coupons and each and every of them, with the bonds from which they were cut, respectively, and bearing equal numbers therewith, for a good and valuable consideration, in good faith, before the maturity of said coupons and bonds or any or either of them and without notice of any defences to the same or to any or either of them.

And plaintiff avers that said defendant, by means of the premises, on, to wit, *on* the 6th day of July, A. D. 1885, then and there, at the district aforesaid, bec*ause* liable to pay said plaintiff the said sums of money in said four hundred and two (402) coupons specified and each and every of them, according to the tenor and effect thereof; and, being so liable, the defendant, in consideration thereof, then and there promised to pay said plaintiff said sums of money in

15 said four hundred and two (402) coupons mentioned and each and every of them, according to the tenor and effect of the same, whenever the defendant should thereunto be afterwards requested.

Yet the defendant, though often requested, has not paid said coupons or any or either of them or any part thereof to the plaintiff, but refuses so to do, to the damage of said plaintiff of seventy-five thousand dollars, and therefore he brings this suit, &c.

THOMAS S. McCLELLAND AND
GEORGE A. SANDERS,
Attorneys for Plaintiff.
THOMAS S. McCLELLAND,
Of Counsel.

16 *Copy of Account Sued On.*

The town of Elmwood, Peoria county, Illinois, to Amos Dows, Dr.

To am't due on 17 coupons, $100 each, due July 1, 1873	$1,700 00
" interest on same to date of judgment.	
" am't due on 32 coupons, $100 each, due July 1, 1874	3,200 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1875	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1876	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1877	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1878	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1879	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1880	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1881	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1882	3,300 00
" interest on same to date of judgment.	
" am't due on 33 coupons, $100 each, due July 1, 1883	3,300 00
" interest on same to date of judgment.	
" am't due on 28 coupons, $100 each, due July 1, 1884	2,800 00
" interest on same to date of judgment.	
" am't due on 28 coupons, $100 each, due July 1, 1885	2,800 00
" interest on same to date of judgment.	
To amount due on 402 coupons of $100 each	$40,200 00
" interest on same to date of judgment.	

17 *Copy of One of the Coupons Sued On.*

"$100. No. 39.

"*Elmwood Township Railroad Bond.*

"Interest warrant.

"Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer, July 1, 1873, one hundred (**4**) dollars, at the office of the State treasurer, Springfield, Illinois.

"S. F. JONES, *Supervisor.*
"S. M. FARRAR, *Clerk.*"

The remaining 401 coupons are of the same tenor and effect, except as to numbers and dates of maturity, to wit:

16	of	said	coupons	are	numbered	39	to	43	and 59 to 70	and due	July	1,	1873
32	"	"	"	"	39	to	70			"	"	"	1874
33	"	"	"	"	"	"	and	75		"	"	"	1875
33	"	"	"	"	"	"	"	"		"	"	"	1876
33	"	"	"	"	"	"	"	"		"	"	"	1877
33	"	"	"	"	"	"	"	"		"	"	"	1878
33	"	"	"	"	"	"	"	"		"	"	"	1879
33	"	"	"	"	"	"	"	"		"	"	"	1880
33	"	"	"	"	"	"	"	"		"	"	"	1881
33	"	"	"	"	"	"	"	"		"	"	"	1882
33	"	"	"	"	"	"	"	"		"	"	"	1883
28	"	"	"	"	"	"	"	"		"	"	"	1884
28	"	"	"	"	"	"	"	"		"	"	"	1885
Total, 401													

Endorsed: Filed Oct. 26, 1885. Wm. H. Bradley, clerk.

18 Afterwards, to wit, on the second day of December, 1885, came the defendant, by its attorneys, and filed in said clerk's office its plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

STATE OF ILLINOIS, NORTHERN DISTRICT, *ss:*

Circuit Court United States. December Term, A. D. 1885.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

And now comes the said defendant, by Hopkins & Hammond, its attorneys, and defends the wrong and injury when, &c., and says, *actio non*, because it says that the said several supposed contracts or obligations, the sole causes of action upon which this suit is brought, and each and every of them, viz., the several coupons or interest warrants in plaintiff's declaration mentioned, were and each of them was, when made and when obtained by the plaintiff, and still is and are null and void for want of any lawful power or authority to make or issue them or any of them of which the plaintiff had and is chargeable with due notice, in this, to wit, the only power or authority for the creation or issuing of said coupons or any of them or of the bonds to which they or any of them were attached,

19 in manner and form as in plaintiff's declaration alleged, and the only exercise of or attempt to exercise such power were as follows: March 5th, 1867, the Legislature of the State of Illinois passed an act or charter incorporating the Dixon, Peoria & Hannibal Railroad Company, the sixth section of which is as follows: The several counties in which any part of said road may hereafter be located and the several townships in said counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in said counties are hereby authorized to subscribe and take stock in said Dixon, Peoria and Hannibal Railroad Company. Elections may be held in such county, township, city, or incorporated town upon the question whether such county, township, city, or town shall subscribe for any specified amount of the stock of said company, not exceeding one hundred thousand

dollars for each county and not exceeding thirty-five thousand dollars for each of such townships, cities, or towns; and elections may be held in any such county, township, city or town as often as a petition shall be presented, as hereinafter specified, until such county, township, city, or town shall have subscribed for the full amount of stock authorized by this act. Whenever a petition shall be presented to the board of supervisors, signed by fifty
20 legal voters of such county, setting forth the amount of stock proposed to be taken by any such county and specifying the time for holding such an election, it shall be the duty of the county clerk of such county to give twenty days' notice of the time of holding such election, which shall be the same time as that specified in such petition; and whenever a petition shall be presented to the supervisors of any such township or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such township, city, or town, setting forth the amount of stock proposed to be taken by any such township, city, or town, and specifying the time for holding such an election, it shall be the duty of the clerk of every such township, city, or town to give twenty days' notice of the time of holding such an election in such township, city, or town, which shall be the same as that specified in such petition, which said notice or notices shall be given in the same manner, and such election or elections shall be conducted in the same mode and at the places provided for holding general elections in such counties, townships, cities, and towns, at which election or elections the qualified voters of the respective counties, townships, cities, and towns shall vote "For subscription" or "Against subscription;" and if a majority of the votes actually cast at such election shall be "For subscription" it shall be the duty of
21 the board of supervisors of every such county, the supervisor and clerk of any such township, and the corporate authorities of such city or town to subscribe without unnecessary delay, upon request of said company, for stock in said company to the amount mentioned in such petition, and to issue and deliver to said company the same amount as the stock so subscribed of the bonds of such county, township, city, or town, as the case may be, payable at any time specified, not exceeding twenty years from their date, with interest at a rate not exceeding ten per cent. per annum, payable annually, which said bonds and the interest accruing thereon shall be made payable at such place within the United States as said company may request.

And on the eleventh day of February, A. D. 1869, in pursuance of said sixth section of said charter, a petition, signed by thirty-one legal voters of said town of Elmwood, was presented to the supervisor of said town, representing that they desired an election, to be called pursuant to the provisions of the section aforesaid, to be held in said township on the sixteenth day of March, A. D. 1869, to decide by ballot whether said town would subscribe the thirty-five thousand dollars authorized by said charter to the capital stock of said railroad company and issue its bonds therefor, as by said charter provided.

22 And on the sixteenth day of February, A. D. 1869, the supervisor, town clerk, two justices of the peace, and twelve freeholders of said township filed in the office of the town clerk thereof a second petition, requesting that a special town meeting be called to determine by ballot whether said town would subscribe to the capital stock of said railroad company any amount over and above said thirty-five thousand dollars authorized by said charter, and with reference to which an election had already been called, and, if so, in what further sum said township would so subscribe.

And, on the ninth day of March, A. D. 1869, said Legislature passed an amendment of said charter of the railroad company as follows:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That an act entitled "An act to incorporate the Dixon, Peoria and Hannibal Railroad Company," approved March 5, 1867, be so amended as to authorize the several counties in which any part of said railroad may be hereafter located to subscribe or make donations, under the provisions of said act, to the capital stock of said company in any amount not exceeding two hundred thousand dollars for any such county, and that the townships, cities, and incorporated towns in any such county be, and are hereby, authorized to subscribe and make donations, under the provisions of said act, to the capital stock of said company in any
23 amount not exceeding one hundred thousand dollars for any such township, city, or incorporated town.

§ 2. This act shall be in force from and after its passage.

Approved March 9th, 1869.

But no part of said railroad was located in said township of Elmwood nor in the county of Peoria, in which said township of Elmwood is situated, subsequently to the passage of said last-named act; but, on the contrary, said railroad was fully located in and through said township of Elmwood and in and through said Peoria county prior to the passage of said act—that is, before said 9th day of March, 1869.

And, in pursuance of said first-named petition, an election was duly notified and held in said township on said sixteenth day of March, A. D. 1869, and, at the same time, three hundred and sixty votes were cast in favor of the said subscription of thirty-five thousand dollars to the capital stock of said railroad company and issuing the bonds of said township for the same and one hundred and forty-one votes against such subscription.

And, in pursuance of said second-named petition, a special town meeting was duly notified and held in said township on said 16th day of March, A. D. 1869, at the same time and place with said first-named election, and at said town meeting three hundred and
24 forty-five votes were cast in favor of a further subscription of forty thousand dollars to the capital stock of said railroad company and one hundred and forty votes were cast against said further subscription.

And on the seventeenth day of April, A. D. 1869, said Legislature passed another act, as follows:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in General Assembly, That a certain election held in the township of Elmwood, in Peoria county, on the sixteenth day of March, anno Domini one thousand eight hundred and sixty-nine, at which a majority of the legal voters in said township, in a special town meeting, voted to subscribe for and take forty thousand dollars of the capital stock of the Dixon, Peoria and Hannibal Railroad Company over and above the thirty-five thousand dollars which was on the same day subscribed for and taken in accordance with the provisions of the charter of said company, is hereby legalized and confirmed and is declared to be binding upon said township; and the said forty thousand dollars, when subscribed according to the conditions of said vote, may be collected from said township in the same manner as if the said subscription had been made under the provisions of said charter.

§ 2. This act shall be deemed a public act, and shall take effect and be in force from and after its passage.

25 And on the 27th day of April, A. D. 1869, the supervisor and town clerk of said town of Elmwood executed in due form and delivered to said railroad company thirty-five bonds of said township for one thousand dollars each, payable twenty years from date, with proper coupons attached for payment of annual interest upon the same, which bonds were numbered consecutively from number one to number thirty-five, inclusive, and also, in the name of said township, subscribed thirty-five thousand dollars to the capital stock of said railroad company and received stock certificates therefor; and said supervisor and town clerk then and there, in pursuance of the vote of said special town meeting, subscribed, in the name of said township, for a further sum of forty thousand dollars to the capital stock of said railroad company, and received stock certificates therefor, and in payment for the same executed and delivered to said railroad company forty other bonds of said township in the sum of one thousand dollars each, payable twenty years from date, with interest warrants or coupons attached providing for the payment of the annual interest thereon, which said forty bonds were numbered consecutively from number thirty-six

26 to number seventy-five, both inclusive, and which last-named forty bonds so numbered from thirty-six to seventy-five, inclusive, or some of them, are the same bonds to which the coupons, and all and every of them, upon which this suit is brought, were attached, as in said declaration alleged, and from which the same have since been separated, and they, each and all of them, represent the annual interest supposed to have accrued upon such of said bonds as bear a corresponding number with said coupons, respectively, and no other indebtedness whatever.

For the reasons aforesaid defendant avers that said forty bonds and all the said coupons originally attached to them and each of them are and is and ever have been null and void for want of any

lawful power to create or issue the same, of all of which the plaintiff had and is chargeable with notice.

And defendant avers that soon after said forty bonds were so delivered said Dixon, Peoria and Hannibal Railroad Company abandoned the further construction of said railroad and never completed the same, but under a power to lease contained in its charter leased that portion of its road which it had constructed, to wit, between Elmwood, in Peoria county, and Buda, in Bureau county, to
27 the Chicago, Burlington and Quincy Railroad Company, together with all its other property, for a term of ninety-nine years, with the privilege of perpetual renewal, and the capital stock of said Peoria, Dixon and Hannibal Railroad Company so issued for said forty bonds is and ever has been wholly worthless.

And defendant further avers that it has possession and sole control of and is the owner of all the interest in and title to said stock which it ever had, and the certificates of the same issued by said railroad company in consideration of said forty bonds, and defendant is ready and willing and hereby offers to surrender said stock upon the surrender and cancellation of said forty bonds, or to bring the same into court so that it or any part of it may be surrendered or turned over to the plaintiff upon the surrender and cancellation of any like portion of said forty bonds and the coupons which were attached to the same, or to abide any other order which the court shall make concerning the said stock and the certificates thereof; and this the defendant is ready to verify.

Wherefore he prays judgment, &c.

By HOPKINS & HAMMOND,
Att'ys for Def't.

Endorsed: Filed Dec. 2d, '85. Wm. H. Bradley, cl'k.

28 Afterwards, to wit, on the third day of December, 1885, came the plaintiff, by his attorneys, and filed in said clerk's office his demurrer to the plea of the defendant in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Circuit Court of the United States. Octobor Term, A. D. 1885.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Ass't.

And the plaintiff, as to the plea of the defendant by it above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar him, the plaintiff, from having his aforesaid action, and that he is not bound by law to answer the same; and this he is ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment and his damages, &c., to be adjudged to him, &c.

THOS. S. McCLELLAND,
GEORGE A. SANDERS,
Att'ys for Pl'ff.

Endorsed: Filed Dec. 3, 1885. Wm. H. Bradley, clerk.

29 Afterwards, to wit, on the eleventh day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit court judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now comes the defendant, by Mr. Hopkins, its attorney, and — his motion leave is given it to file additional pleas herein.

Afterwards, to wit, on the twenty-third day of May, 1887, came the defendant, by its attorneys, and filed in said clerk's office its additional pleas in said entitled cause; which said additional pleas are in the words and figures following, to wit:

30 *Additional Pleas.*

Circuit Court of the United States, Northern District of Illinois.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

1st. And now comes the said defendant, by Hopkins & Hammond, its attorneys, and, by leave of court first had and obtained, files these its additional pleas herein, and says *actio non* as to a part of the plaintiff's said causes of action, as hereinafter shown, because its says that the said several causes of action in plaintiff's declaration mentioned are the said 402 coupons therein named and not other or different, and that all of the said coupons are for interest upon and are attached to or cut from some of the thirty-three supposed bonds of the defendant in said declaration mentioned, and numbered as therein alleged, to wit: Numbers 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, and 75; and defendant avers that at the March term of this court, A. D. 1875, one George O. Marcy, then the owner of thirty coupons, twenty-six of which were for interest upon and cut from twenty-six of the identical bonds aforesaid, to wit, said bonds numbered 36, 37, 38, 39, 40, 41, 42, 43, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, and 75, commenced a suit against this defendant to recover upon said thirty coupons, twenty-six of which were cut from and represented interest upon said twenty-six last named of the identical bonds from which two hundred and forty-eight of the coupons or interest warrants upon which this suit is

brought were cut, to wit, the twenty-six bonds last above
31 enumerated; and said Marcy filed his declaration in said case to said March term, A. D. 1875, in substance as follows, to wit:

UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Illinois.
March Term, A. D. 1875.

GEORGE O. MARCY *vs.* TOWN OF ELMWOOD.

George O. Marcy, a citizen of the State of Massachusetts, plaintiff in this suit, by Wilson & Perry, his attorneys, complains of Town of Elmwood, a municipal corporation organized and existing under and by virtue of the township organization laws of the State of Illinois, at and within the county of Peoria, in said State of Illinois, to wit, at and within said northern district of Illinois, defendant in this suit, being summoned, &c., in a plea of trespass on the case upon promises:

For that heretofore, to wit, on the 27th day of April, A. D. 1869, at said town of Elmwood, to wit, at the within said northern district of Illinois, the said defendant, by the name and style of the Township of Elmwood, by its duly authorized officers and agents, and in pursuance of the then existing laws of said State of Illinois, made, executed, and delivered to the Dixon, Peoria and Hannibal Railroad Company, an incorporated company existing under and by virtue of the laws of the State of Illinois, its certain evidences of indebtedness commonly called town bonds, signed by L. F. Jones, the supervisor, and Samuel M. Farrar, the town clerk of said town of Elmwood, and then and there, in and by each of said evidences of indebtedness, acknowledged itself, by the name and style
32 of Township of Elmwood, to owe and be indebted to the bearer thereof in the sum of one thousand dollars, which said sum the said defendant, by the name and style aforesaid, thereby then and there promised to pay to the bearer of said bonds, on the first day of July, A. D. 1889, with interest thereon at the rate of ten per cent. per annum, payable annually, on the first day of July in each year, at the office of the State treasurer of said State of Illinois, at Springfield, on the presentation and surrender of the interest warrants annexed to said bonds, in each of which said bonds or evidences of indebtedness it was recited that such bond was issued under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Dixon, Peoria and Hannibal Railroad Company," approved March 5th, 1869, and amended and approved March 9th, 1869, and also in virtue of an act entitled An act to legalize a certain election therein named, approved April 17, 1869, and authorizing the several townships, cities, and incorporated towns in the counties through which the road may be located to subscribe and take stock in the Dixon, Peoria and Hannibal Railroad Company to an amount not exceeding one hundred thousand dollars to each township, city, or incorporated town, and to pay for the same

in the bonds of said township, city, or town maturing twenty years from the date of their issue and bearing interest at a rate not exceeding ten per cent. per annum, payable annually, in accordance with the vote of the electors of said township at the special election held March 16, A. D. 1869, in accordance with the provisions of said act, to each of which said bonds was annexed certain written interest warrants, commonly called coupons, subscribed by said supervisor by the name of L. F. Jones, supervisor, and by said town clerk
by the name of S. M. Farrar, respectively, ordering and
33 directing the supervisor of said town to pay to the bearer of said coupons, on the first day of July in the respective years when the same should be payable, according to the tenor of said coupons, respectively, one hundred dollars, at said State treasurer's office, being the annual interest for the year ending on that day, each of said interest warrants bearing a number corresponding to the number of the bonds to which they were respectively annexed, which said bonds with said coupons annexed were, after their execution and delivery to said railroad company as aforesaid and before their maturity, to wit, on the 27th day of April, 1869, to wit, at Boston, in said State of Massachusetts, sold, transferred, and delivered by said railroad company for value to *bona fide* purchasers, who thereby became the bearers and owners thereof; that afterwards and before the commencement of this suit, to wit, on the day and year last aforesaid, a large number of said coupons, being the coupons hereinafter described, were detached from said bonds and were purchased by and transferred to said plaintiff from said last-named purchasers for value, and said plaintiff thereby became and from thence hitherto has been and still is the bearer and owner of said coupons; that thirty of said coupons so purchased and transferred to said plaintiff are in words and figures (except the numbers) following, namely:

$100. No. —.

Elmwood Township Railroad Bond.

Interest warrant.

Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer July 1st, 1872, one hundred dollars, at the office of the State treasurer, Springfield, Illinois.

S. M. FARRAR, *Clerk.*
L. F. JONES, *Supervisor.*

Which said coupons are numbered, respectively, as follows:
34 36, 37, 38, 39, 40, 41, 42, 43, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75; that two of said coupons so purchased and transferred to said plaintiff are in the words and figures (except the numbers) following, namely:

$100. No. —.

Elmwood Township Railroad Bond.

Interest warrant.

Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer July 1st, 1873, one hundred dollars, at the office of the State treasurer, Springfield, Illinois.

L. F. JONES, *Supervisor.*
S. M. FARRAR, *Clerk.*

Which said last two coupons are numbered, respectively, as follows: 37, 38.

That four of said coupons so sold and transferred to said plaintiff are in the words and figures following (except the numbers), namely:

$100. No. —.

Elmwood Township Railroad Bond.

Interest warrant.

Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer July 1st, 1874, one hundred dollars, at the office of the State treasurer, Springfield, Illinois.

L. F. JONES, *Supervisor.*
S. M. FARRAR, *Clerk.*

Which said last-named coupons are numbered, respectively, as follows: 71, 73, 74, 75; whereby and by means of the premises aforesaid the said defendant, the said Town of Elmwood, became liable to pay to said plaintiff the several sums in each of said coupons, as above specified, amounting in all to a large sum, to wit, the sum of thirty-six hundred dollars, and in consideration thereof, then and there, to wit, on said 27th day of April 1869, to wit, at and within said northern district of Illinois, undertook and promised, by the name and style of the Township of Elmwood, to pay said plaintiff the
35 same at the several times and according to the tenor and effect of said coupons, which times have severally elapsed; yet the said defendant, though requested and though each of said coupons was duly presented for payment at the place in said coupons specified and payment thereof demanded, of all which the defendant had notice, has not paid the same nor any part thereof, but so to do has wholly neglected and refused.

And whereas also the said defendant heretofore, to wit, on the first day of February, A. D. 1875, at Elmwood, to wit, at and within said northern district of Illinois, became and was indebted to the plaintiff in the sum of five thousand dollars for money then lent by the plaintiff to the said defendant at its request, and in the sum of five thousand dollars for money then paid by the plaintiff for the use of said defendant at its request, and in the sum of five thousand dollars for money then received by said defendant for the use of the plaintiff, and in the sum of five thousand dollars for money found to be due

from said defendant to the plaintiff upon an account then stated between them, and in the sum of five thousand dollars for interest then due and owing to the plaintiff from said defendant on the coupons in the first count mentioned, accruing after their maturity.

And, in consideration thereof, then and there promised the plaintiff to pay him the several moneys aforesaid upon demand, yet the said defendant has never paid any of said moneys, but wholly neglects to do so.

By means of which said several premises the plaintiff sustained damage to the amount of five thousand dollars, and therefore brings suit, &c.

By WILSON & PERRY,
His Attorneys.

36 And defendant was duly served with summons and appeared to said action, and the same was tried upon its merits at the July term of this court, 1875, the same going to trial upon proofs and evidence under plea of the general issue and a stipulation of the parties that all defenses might be given thereunder as hereinafter shown, and such proceedings were had in said cause that, upon the opinion of the presiding judge of this court, the plaintiff recovered a judgment against this defendant for the amount of said thirty coupons and interest on the same; and this court, at the same time, made and entered of record in said cause a certificate of division of opinion between the circuit and district judges, showing the pleadings, issues, and proofs in said cause, and at said trial thereof, which is as follows and is made part hereof, to wit:

Certificate of Division of Opinion.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States, Northern District of Illinois.
July Term, 1875.

GEORGE O. MARCY *vs.* TOWN OF ELMWOOD.

Certificate of opposition of opinion between the judges of said court at a circuit court of the United States begun and held at Chicago, in and for the said district, on the 28th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

Present: Hon. Thomas Drummond and Hon. Henry W. Blodgett, judges before whom said cause was heard.

Statement of issues.

37 Action of assumpsit commenced *to* the March term, 1875, to recover upon 36 coupons, thirty of which, numbered from 36 to 43, inclusive, and from 54 to 75, inclusive, — due July 1, 1872, and two of which coupons, numbered 37 & 38, matured July 1st, 1873, and four, numbered 71, 73, 74, 75, matured July 1st, 1874, the form of which coupons is substantially as follows:

Elmwood Township Railroad Bond.

No. —.

Interest warrant.

Supervisor of Elmwood township, Peoria county, Illinois, pay to bearer July 1st, 1872, one hundred dollars, at the office of the State treasurer, Springfield, Illinois.

L. F. JONES,
Supervisor.
S. M. FARRAR,
Town Clerk.

Plea, general issue, with stipulation that any facts constituting a defense to the action may be proved under said plea with the same effect as if specially pleaded.

On the — day of June, 1875, this cause coming on for trial upon the merits, the following facts and private acts of the Legislature of Illinois were proven:

1st. That said coupons were cut from the bonds hereinafter named, bearing the same numbers, respectively, as the said coupons, and were for interest purporting to be due thereon on the 1st day of July, 1872 and 1873 and 1874, as above stated, and that the same were purchased by the plaintiff for value at 100 cents on the dollar, before any of said coupons matured and without any actual knowledge or information of any defense.

2nd. That the bonds from which said coupons were detached are in substance as follows:

38 UNITED STATES OF AMERICA, *State of Illinois:*

Number —. Dollars 1,000.

Township railroad bonds.

Know all men by these presents that the Township of Elmwood, in the county of Peoria and State of Illinois, acknowledges itself to owe and be indebted unto the bearer hereof — the sum of one thousand dollars, payable on the 1st day of July, A. D. 1889, with interest thereon at the rate of ten per centum per annum, payable annually, on the 1st day of July in each year, at the office of the State treasurer, in Springfield, Illinois, upon presenting and delivering of the proper coupons, hereunto annexed, until the payment of the principal sum. This bond is issued under and by virtue of a law of the State of Illinois entitled "An act to incorporate the Dixon, Peoria and Hannibal Railroad Company," approved March 5th, 1869, and amended and approved March 9th, 1869, and also in virtue of an act entitled "An act to legalize a certain election therein named," approved April 17, 1869, authorizing the several townships, cities, or incorporated towns in the counties through which the road may be located to subscribe and take stock in the

Dixon, Peoria & Hannibal Railroad Company to an amount not exceeding one hundred thousand dollars to each township, city, or incorporated town, and to pay for the same in the bonds of said township, city, and town coming due twenty years from the date of their issue and bearing interest at a rate not exceeding ten per cent. per annum, payable annually, and in accordance with the vote of the electors of said township at the special election held March 16th, A. D. 1869, in accordance with the provisions of said act, and the faith of the township of Elmwood is hereby pledged for the payment of the principal sum and interest thereon as aforesaid.

In testimony whereof the supervisor and clerk of said township of Elmwood have subscribed this bond this 27th day of April, A. D. 1869.

L. F. JONES,
Supervisor.
S. M. FARRER,
Town Clerk.

3d. That the Dixon, Peoria and Hannibal Railroad Company was incorporated by an act of the Legislature of the State of Illinois in force March 5th, 1867, the sixth section of which act is as follows: "The several counties in which any part of said road may hereafter be located and the several townships in said counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in said counties hereby authorized to subscribe and take stock in said Dixon, Peoria and Hannibal Railroad Company.

"Elections may be held in any such county, township, city, or incorporated town upon the question whether such county, township, city, or town shall subscribe for any specified amount of the stock of said company not exceeding one hundred thousand dollars for each county and not exceeding thirty-five thousand dollars for each of such townships, cities, or towns, and elections may be held in any such county, township, city, or town as often as a petition shall be presented, as hereinafter specified, until such county, township, city, or town shall have subscribed for the full amount of stock authorized by this act.

"Whenever a petition shall be presented to the board of supervisors, signed by fifty legal voters of any such county, setting forth the amount of stock proposed to be taken by any such county and specifying the time for holding such an election, it shall be the duty of the county clerk of such county to give twenty days' notice of the time of holding such election, which shall be the same time as that specified in such petition; and whenever a petition shall be presented to the supervisor of any such township or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such township, city, or town, setting forth the amount of stock proposed to be taken by any such township, city, or town and specifying the time for holding such an election, it shall be the duty of the clerk of every such township, city, or town to give

twenty days' notice of the time of holding such an election in such township, city, or town, which shall be the same as that specified in such petition, which said notice or notices shall be given in the same manner, and such election or elections shall be conducted in the same mode and at the places provided for holding general elections in such counties, townships, cities, and towns, at which election or elections the qualified voters of the respective counties, townships, cities, and towns shall vote 'For subscription or against subscription;' and if a majority of the votes actually cast at any such election shall be 'For subscription' it shall be the duty of the board of supervisors of every such county, the supervisor and clerk of any such township, and the corporate authorities of such city or town to subscribe, without unnecessary delay, upon request of said company, for stock in said company to the amount mentioned in such petition and to issue
41 and deliver to said company the same amount as the stock so subscribed of the bonds of such county, township, city, or town, as the case may be, payable at any time specified, not exceeding twenty years from their date, with interest at a rate not exceeding ten per cent. per annum, payable annually, which said bonds and the interest accuring thereon shall be made payable at such place with the United States as said company may request."

4th. That on the 11th of February, 1869, a petition, signed by thirty-one legal voters of said town of Elmwood, was presented to the supervisor of said town, representing that they desired an election, to be called in pursuance of the provisions of said charter of said railroad company, to be held on the 16th day of March, 1869, for the purpose of deciding by ballot whether the said township would subscribe thirty-five thousand dollars to the capital stock of said railroad company and issue the bonds of said township in payment for the same in the manner provided by said charter.

That in pursuance of said petition an election was notified and held in the manner provided by said charter, on the 16th day of March, 1869, at which election three hundred and forty-six votes were cast in favor of such subscription and one hundred and forty-one against it.

5th. That on the 16th day of February, 1869, the supervisor, town clerk, two justices of the peace, and twelve freeholders of said township filed in the office of the town clerk thereof a petition requesting that a special town meeting of the legal voters of said town be called to determine by ballot "whether said town will subscribe for the capital stock of said Dixon, Peoria and Hannibal Railroad Company to any amount, and, if so, to what amount, over and above the thirty-five thousand dollars authorized by the char-
42 ter of said company and a reference to which a meeting of said legal voters has also been called."

That in pursuance of said last-named petition an election was notified by the town clerk on the 16th day of February, A. D. 1869, and holden at the same time and place with the election held in pursuance of said first-named petition, and that at said last-named election three hundred and forty-five votes were cast in favor of an additional subscription of forty thousand dollars to the stock of said

railroad company over and above the amount authorized by the said charter and one hundred and forty votes were cast against such additional subscription.

6th. That on the 9th day of March, 1869, an act of the Legislature of the State of Illinois was enacted as follows:

"That an act entitled 'An act to incorporate the Dixon, Peoria and Hannibal Railroad Company,' approved March 5th, 1867, be so amended as to authorize the several counties in which any part of said road may be hereafter located to subscribe or make donations under the provisions of said company in any amount not exceeding two hundred thousand dollars for any such county, and that the townships, cities, and incorporated towns in any such county be, and are hereby, authorized to subscribe or make donations under the provisions of said act to the capital stock of said company in any amount not exceeding one hundred thousand dollars for any such township, city, or incorporated town.

"SEC. 2. This act shall be in force from and after its passage.

"Approved March 9th, 1869."

43 7th. That on the 17th day of April, 1869, an act of the the Legislature of the State of Illinois was enacted, as follows:

"That a certain election held in the township of Elmwood, in Peoria county, on the 16th day of March, anno Domini, 1869, at which a majority of the legal voters in said township, in special town meeting, voted to subscribe for and take forty thousand dollars of the capital stock of the Dixon, Peoria and Hannibal Railroad Company over and above the thirty-five thousand dollars which was on the same day subscribed for and taken in accordance with the provisions of the charter of said company, is hereby legalized and confirmed and is declared to be binding upon said township, and the said forty thousand dollars, when subscribed according to the conditions of said vote, may be collected from said township in the same manner as if the said subscription had been made under the provisions of said charter.

"SECTION 2. This act shall be decreed a public act, and shall take effect and be in force from and after its passage.

"Approved April 17th, 1869."

8th. That on the 27th day of April, 1869, the supervisor and town clerk of said town issued and delivered to the president and secretary of said railroad company the bonds of said township to the amount of $75,000, with coupons attached for the annual interest thereon, in payment for the capital stock of said company subscribed and taken in pursuance of both the elections aforesaid.

9th. That before the commencement of said suit said coupons were presented for payment at the office of the State treasurer, at Springfield, Illinois, and also to the supervisor of said township, but payment thereof was refused.

44 10th. That soon after the receipt of said bonds by the railroad company as aforesaid said company, under a power to

lease in its charter, made a lease for ninety-nine years of its road and all of its property to the Chicago, Burlington and Quincy Railroad Company, which has ever since had possession of and operated said road, and the capital stock of said Dixon, Peoria and Hannibal Railroad Company is and has ever since been of no market value; and that said last-named railroad has only been constructed from its junction with said Chicago, Burlington and Quincy railroad at Buda, Illinois, to its junction with the same road at Elmwood, Illinois.

11th. That upon receipt of the bonds aforesaid the president and secretary of said railroad company delivered to said supervisor and town clerk a certificate of the capital stock of said Dixon, Peoria and Hannibal Railroad Company for the amount of $75,000, the amount of said bonds, and the same has not been returned or tendered to said company by said Town of Elmwood.

12th. That the said Dixon, Peoria and Hannibal railroad was, after the passage of its charter by the Legislature as aforesaid, located in said township of Elmwood, in the county of Peoria and State of Illinois, prior to the date of the said first election and the issue of the bonds aforesaid, and that the township organization was adopted in said township prior to the date of the passage of the charter of said railroad company.

13th. That there is now due upon the said coupons the sum of forty-one hundred and ninety-two and $\frac{90}{100}$ dollars, according
45 to their tenor, which amount the plaintiff is entitled to recover if entitled to judgment in the cause.

Upon the hearing of said cause as aforesaid and during said term it occurred as a question whether, upon the facts and under the acts of the legislature aforesaid, there existed at the time of the issue of said bonds power and lawful authority to issue said bonds and coupons so as to render the said coupons valid and collectible in the hands of the plaintiff; on which question the opinions of the said judges were opposed.

Whereupon, on motion of counsel for defendant that the point of disagreement aforesaid may, during the term aforesaid, be stated under the direction of the judges and duly certified, under the seal of this court, to the Supreme Court to be finally decided, it is ordered that the foregoing statement of the pleadings and of the facts which is made under the direction of the said judges be certified according to the request of the defendant, by its counsel as aforesaid, and according to the law in such case made and provided.

By which pleadings and proofs in said cause of Marcy against this defendant the validity of said twenty-six bonds from which said thirty coupons were cut, being the same bonds from which said two hundred and forty-eight of the coupons involved in this suit are cut, was directly put in issue, tried, and adjudicated. And upon the rendition of such judgment of this court and the record of the certificate of division of opinion as aforesaid this defendant removed said cause by writ of error to the Supreme Court of the United States; and such proceedings were had in said cause by said Supreme Court, at its October term, 1875, that said plaintiff in error

and said defendant in error appeared before said court and
46 tried said cause upon its merits and duly submitted the same to said court for its judicial decision, whereupon the said Supreme Court, by its final decision and judgment, lawfully rendered, held and adjudged that said 26 bonds were null and void and reversed the said judgment of this court, rendered as aforesaid, and filed and recorded its judgment of reversal to that effect and filed and recorded its opinion to the same effect, the same being reported in volume 92 of United States Reports, page 289, and the same is hereby referred to for its contents.

Wherefore defendant avers that by the final judgment of said Supreme Court in said cause the said twenty-six bonds from which said two hundred and forty-eight coupons upon which this suit is brought were cut are and each of them is null and void for lack of any competent power in said township to issue them, as by said opinion shown, and that such prior final judgment is conclusive of the invalidity of said bonds and all and every of the coupons cut from the same.

And this the defendant is ready to verify; wherefore it prays judgment, &c.

By HOPKINS & HAMMOND,
Att'ys for Defendant.

And now comes the said defendant, by Hopkins & Hammond, its attorneys, and defends the wrong and injury and says it did not undertake and promise in manner and form as the plaintiff hath thereof above alleged against it; and this it prays may be inquired of by the country.

HOPKINS & HAMMOND,
Def'ts Att'ys,

And plaintiff doth the like.

THOMAS S. McCLELLAND,
Pl'ff's Att'y.

47 3d. And for further additional pleas, by leave, &c., defendant says *actio non*, because it says that the several causes of action in plaintiff's declaration mentioned are said four hundred and two coupons therein named and not other or different, and that all of said coupons are for interest upon and are attached to or cut from some of the thirty-three supposed bonds of this defendant in said declaration mentioned, and are numbered as therein alleged, to wit, numbers thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, and seventy-five.

And defendant avers that at the March term of this court, A. D. 1875, one George O. Marcy, then the owner of thirty coupons cut from twenty-six of the identical bonds from which some of the coupons

upon which this suit is brought were cut, commenced a suit against this defendant to recover the amount of such coupons in this court, at its March term, A. D. 1875, and such proceedings were had therein and in the Supreme Court of the United States, upon writ of error sued out in the same cause, as are shown and fully set out in the first of defendant's additional pleas, herewith filed, from the words "and defendant," in the middle of the seventeenth line, on the first page thereof, to the end of the twenty-seventh page thereof; and, to avoid a repetition, defendant makes that portion of its said first additional plea, commencing with the middle of the seventeenth line, upon the first page thereof, to the end of the twenty-seventh page thereof, a part of this plea the same as if herein fully copied.

By which pleas and proofs in said cause of Marcy against this defendant the validity of all the bonds in said plaintiff's declaration mentioned, from which all of the coupons in said declaration named were cut, are distinctly put in issue and tried and adjudicated, and upon the rendition of such judgment of this court and the record of the certificate of division of opinion as aforesaid this defendant removed said cause by writ of error to the Supreme Court of the United States, and such proceedings were had in said cause by said Supreme Court, at its October term, 1875, that said plaintiff in error and said defendant in error appeared before said court and tried said cause upon its merits and duly submitted the same to said Supreme Court for its judicial decision, whereupon said Supreme Court, by its final decision and judgment, lawfully rendered at its said term, held and adjudged that all the said supposed bonds of said township, numbered from thirty-six to seventy-five, both inclusive, were null and void, and reversed the said judgment of this court, rendered as aforesaid, and filed and recorded its judgment of reversal to that effect, and also filed and recorded its opinion to the same effect, which is duly reported in volume ninety-two, United States Reports, page two hundred and eighty-nine, and the same is hereby referred to for its contents.

Wherefore defendant avers that by the final judgment of said Supreme Court in said cause rendered as aforesaid all the said bonds from which the coupons or any of them were cut or to which they
48 are or were attached are and each of them is null and void for lack of any competent power in said township to issue them, as by said opinion and final judgment of said Supreme Court shown; which said opinion and final judgment are in full force and conclusive of the invalidity of said bonds and all and every of the coupons attached to or cut from the same.

And this the defendant is ready to verify; wherefore it prays judgment, &c.

HOPKINS & HAMMOND,
Attorneys for Defendant.

4th. And for further additional plea, by leave of court first obtained, defendant says *actio non*, because it says (here, to avoid repetition, defendant makes a part of this plea, the same as if herein repeated, all that part of its first additional plea filed herewith, com-

mencing with the words "that the said several," in the seventh line from the beginning of the first clause after the title on page 1 thereof, and thence forward to the end of the twenty-eighth page thereof).

And defendant avers that whatever right, title, or interest said plaintiff has in or to each, any, and all of the said coupons upon which this suit is brought was by him acquired since the date of the rendition of the said final judgment of the Supreme Court of the United States in the said suit of Elmwood *vs.* March, and with full notice of such final judgment and full notice that said bonds and coupons were null and void, as in said judgment adjudicated and settled.

Wherefore defendant avers that, by reason of the final judgment of the said Supreme Court aforesaid, the said twenty-six bonds and all the coupons attached to or cut from them, and all the said thirty-three bonds and all the coupons attached to or cut from them are and were at the commencement of this suit null and void for want of any power in said township to issue them, as by said Su-
49 preme Court adjudicated, of which plaintiff had notice as aforesaid.

And this — defendant is ready to verify; wherefore it prays judgment, &c.

5th. And for a further plea in this behalf as to the sums claimed to be due upon each and all the said supposed coupons in said declaration mentioned, which are alleged to have become due and payable July first (1st), 1873, July first (1st), 1874, and July first (1st), 1875, the defendant, by leave of court first obtained, says *actio non*, because it says that this action was not commenced within ten years next after the supposed causes of action accrued upon said supposed coupons or either of them.

And this the defendant is ready to verify; wherefore it prays judgment, &c.

HOPKINS & HAMMOND,
TRUMBULL, ROBBINS, & TRUMBULL,
For Def't.

Endorsed: Filed May 23, 1887. Wm. H. Bradley, clerk.

50 Afterwards, to wit, on the thirteenth day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AMOS W DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the demurrer of the plaintiff to the special plea filed herein on the second day of December, A. D. 1885, sustains the same.

51 Afterwards, to wit, on the fifteenth day of June, 1887, came the plaintiff, by his attorney, and filed in said clerk's office his motion to strike from the files the additional pleas in said entitled cause; which said motion is in the words and figures following, to wit:

Motion.

Circuit Court of the United States, Northern District of Illinois.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

Mo. to strike pleas from files.

Now comes said pl'ff and moves to strike from the files — in said cause filed on, to wit, May 23, 1887, being five in number, for the the following reasons, to wit:

1st. No notice was given the att'y for pl'ff of record in said district of the intended application to file said pleas.

2d. An issue of law being made up in said cause, it was an irregular practice to allow other pleas to be filed until that issue was disposed of.

3d. It is the duty of a defendant to plead all his defences at the return term of the writ, and, failing to do so, the court should not grant leave to file further pleas, except upon cause shown
52 based upon affidavits excusing the def't for not pleading all of his defences at one and the same time.

4th. The first and third pleas show upon their face that they are not true in fact, in this, to wit, said 1st & 3d pleas aver that the bonds and coupons sued on herein have been adjudicated and held void, whereas the said pleas show upon their face that the coupons herein sued on were not in issue in the suit of Marcy *vs.* Elmwood, nor the bonds from which the coupons in this case were cut.

5th. Having made up an issue of law in this case and relied upon the same for nearly two years, the defendant ought not to be allowed to plead over, except upon showing a meritorious defence.

THOS. S. McCLELLAND,
Pl'ff's Att'y.

Endorsed: Filed June 15, 1887. Wm. H. Bradley, clerk.

53 Afterwards, to wit, on the twenty-seventh day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the plaintiff to strike from the files the additional pleas herein; and, after hearing the arguments of the counsel, the court overrules said motion.

54 On the same day, to wit, on the twenty-seventh day of June, 1887, came the plaintiff, by his attorney, and filed in said clerk's office his demurrer to the first, third, fourth, and fifth pleas of the defendant in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Circuit Court of the United States. May Term, A. D. 1887.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

And the plaintiff, as to the pleas of the defendant by it, on, to wit, May 23, 1887, firstly, thirdly, fourthly, and fifthly above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar him, the plaintiff, from having his aforesaid action, and that he is not bound by law to answer the same, and this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment and his damages, &c., to be adjudged to him, &c.

55 And the plaintiff shows to the court here the following causes of demurrer to said first and third pleas—that is to say, said first and third pleas show upon their face that the instruments herein sued on are other and different instruments from the coupons sued on in said case of Geo. O. Marcy against The Town of Elmwood, and that the party plaintiff in this cause is other and different from the party plaintiff in said cause of Marcy *vs.* The Town of Elmwood, and that said pleas show upon their face that the instruments sued on in this case were not in litigation in said suit of Marcy *vs.* Elmwood, pleaded in said pleas as an estoppel in this suit—

For that the matters and things contained in said special pleas firstly, thirdly, fourthly, and fifthly above pleaded can be shown under the general issue.

And also that said pleas and each of them are in other respects uncertain, informal, and insufficient, &c.

THOS. S. McCLELLAND,
Att'y for said Pl'ff.

Endorsed: Filed June 27, 1887. Wm. H. Bradley, clerk.

56 Afterwards, to wit, on the tenth day of October, 1887, came the defendant, by its attorneys, and filed in said clerk's office its motion to dismiss in said entitled cause; which said motion is in the words and figures following, to wit:

Motion to Dismiss.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois.

AMOS W. DOWS *vs.* TOWN OF ELMWOOD.

And now comes the defendant, by H. B. Hopkins and Lyman Trumbull, its attorneys, and moves the court to dismiss this suit for the following reasons:

First. That said plaintiff is not a real person, but is a fictitious name.

Second. That if said plaintiff is a real person that he is not a *bona fide* holder of the coupons sued upon, and that they were placed in his hands merely for the purpose of bringing a suit in the circuit court of the United States.

Third. That said plaintiff, if a real person, is not a citizen of the State of Massachusetts, nor of any other State in the United
57 States outside of the State of Illinois, nor of any foreign country.

L. TRUMBULL,
H. B. HOPKINS,
Att'ys for Def't.

Endorsed: Filed Oct. 10, 1887. Wm. H. Bradley, clerk.

On the same day, to wit, on the tenth day of October, in the adjourned October term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now come the parties, by their respective attorneys, and now comes on to be heard the motion of the defendant to dismiss this cause, and, after hearing the arguments of the counsel, the court overrules said motion without prejudice; to which ruling of the court the defendant, by its attorney, excepts; and now comes on to be heard the demurrer of the plaintiff to the pleas filed herein, and, after hearing the arguments of the counsel, the court takes said demurrer under advisement.

58 Afterwards, to wit, on the seventeenth day of November, in the adjourned October term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

The court, having considered and being now fully advised upon the demurrer of the plaintiff to the pleas — herein on the twenty-third day of May last, sustains the demurrer to the first, third, fourth, and fifth of said pleas.

59 Afterwards, to wit, on the thirtieth day of January, 1888, came the plaintiff, by his attorney, and filed in said clerk's office his motion to dismiss as to thirty-four coupons in said entitled cause; which said motion is in the words and figures following to wit:

Motion.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

Circuit Court of the United States. December Term, A. D. 1887.

AMOS DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

The plaintiff in the above cause asks leave to withdraw the following instruments without prejudice, to wit, seventeen (17) coupons, numbered 39 to 43, both inclusive, and 59 to 70, both inclusive, cut from bonds bearing the same numbers and which matured and were due and payable July 1, 1873, and seventeen (17) coupons, numbered 39 to 43, both inclusive, cut from bonds bearing the same numbers and which matured and became due and payable July 1, 1874, said suit to stand as to all the remaining instruments sued on and set out in the declaration filed in said cause.

THOMAS S. McCLELLAND,
60 *Att'y for Pl'ff.*

(Endorsed:) Filed Jan'y 30, 1888. Wm. H. Bradley, clerk.

On the same day, to wit, on the thirtieth day of January, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now, on this day, comes said plaintiff, by his counsel, and asks leave to withdraw the following instruments declared on in said cause, to wit, seventeen coupons, numbered 39 to 43, both inclusive,

and 59 to 70, both inclusive, which matured and became due and payable July 1, 1873, and seventeen coupons, numbered 39 to 43, both inclusive, and 59 to 70, both inclusive, which matured and became due and payable July 1, 1874; and the court, being fully advised in the premises, hereby orders and directs that said plaintiff be permitted to withdraw said thirty-four coupons without
61 prejudice, and that said cause stand as to all other coupons declared on.

Afterwards, to wit, on the twenty-eighth day of February, 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now comes the parties, by their attorneys, and, upon issue joined herein, thereupon comes a jury of good and lawful men, to wit, Samuel Davison, A. C. Best, M. P. Garrity, G. L. Manning, D. B. McKenny, Fred K. Bastian, J. S. Bartlett, M. Ford, Benjamin Ream, John Sullivan, O. H. Portch, and William Petty, who were all duly elected, tried, and sworn well and truly to try said issue; and, after hearing the evidence and a part of the arguments of the counsel, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

62 Afterwards, to wit, on the twenty-ninth day of February' 1888, in the December term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing the concluding arguments of the counsel, on motion of the plaintiff, by his attorney, leave is given him to withdraw without prejudice all the coupons declared on herein, except the coupons bearing the numbers from fifty-nine to seventy, inclusive; and, under the instructions of the court, the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff and assess the plaintiff's damages at nineteen thousand two hundred and seventy-two dollars.

And thereupon the defendant, by its attorneys, moves the court for a new trial herein.

63 Afterwards, to wit, on the twenty-seventh day of March, in the adjourned March term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Judgment.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant for a new trial herein, and, after hearing the counsel on the part of the defendant, the court overrules said motion, and the defendant, by its attorney, now moves the court in arrest of judgment; and the court, being now fully advised upon said motion in arrest, overrules the same and awards judgment; to which rulings of the court on both of said motions the defendant, by its attorney, now excepts.

It is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the said sum of nineteen thousand two hundred and seventy-two dollars, his damages so as aforesaid assessed, together with his costs in this behalf expended, amounting to — dollars and — cents.

64 And on motion of the defendant, by its attorney, the time to file a bill of exceptions herein is extended sixty days, and the court fixes the amount of the supersedeas bond herein at twenty-five thousand dollars, and the bond, without being a supersedeas, at five hundred dollars.

65 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the United States Circuit Court for the Northern District of Illinois, Northern Division.

AMOS W. DOWS *vs.* THE TOWN OF ELMWOOD.

Assumpsit.

Be it remembered that on the trial of this cause the plaintiff, to maintain and prove the issue on his part, gave in evidence an act of the General Assembly of the State of Illinois, approved March 5th, 1867, entitled as follows: An act to incorporate the Dixon, Peoria and Hannibal Railroad Company, the sixth section of which is as follows:

§ 6. The several counties in which any part of said road may here-

after be located, and the several townships in said counties which have adopted or may hereafter adopt township organizations, and the cities and incorporated towns in said counties are hereby
66 authorized to subscribe and take stock in said Dixon, Peoria and Hannibal Railroad Company. Elections may be held in any such county, township, city, or incorporated town upon the question whether such county, township, city, or town shall subscribe for any specified amount of the stock of said company, not exceeding one hundred thousand dollars for each county and not exceeding thirty-five thousand dollars for each of such townships, cities, or towns, and elections may be held in any such county, township, city, or town as often as a petition shall be presented, as hereinafter specified, until such county, township, city, or town shall have subscribed for the full amount of stock authorized by this act. Whenever a petition shall be presented to the board of supervisors, signed by fifty legal voters of any such county, setting forth the amount of stock proposed to be taken by any such county and specifying the time for holding such an election, it shall be the duty of the county clerk of such county to give twenty days' notice of the time of holding such election, which shall be the same time as that specified in such petition, and whenever a petition shall be presented to the supervisors of any such township, or to the corpo-
67 rate authorities of any such city or town, signed by twenty-five legal voters of any such township, city, or town, setting forth the amount of stock proposed to be taken by any such township, city, or town and specifying the time for holding such an election, it shall be the duty of the clerk of every such township, city, or town to give twenty days' notice of the time of holding such an election in such township, city, or town, which shall be the same as that specified in such petition, which said notice or notices shall be given in the same manner, and such election or elections shall be conducted in the same mode and at the places provided for holding general elections in such counties, townships, cities, and towns; at which election or elections the qualified voters of the respective counties, townships, cities, and towns shall vote "For subscription" or "Against subscription;" and if a majority of the votes actually cast at any such election shall be "For subscription" it shall be the duty of the board of supervisors of every such county, the supervisor and clerk of any such township, and the corporate authorities of such city or town to subscribe, without unnecessary delay, upon request of said company, for stock in said company to the amount mentioned in such petition, and to issue and deliver to said
68 company the same amount as the stock so subscribed of the bonds of such county, township, city, or town, as the case may be, payable at any time specified, not exceeding twenty years from their date, with interest at a rate not exceeding ten per cent. per annum, payable annually, which said bonds and the interest accruing thereon shall be made payable at such place within the United States as said company may request.

Plaintiff next offered in evidence an act of said General Assembly

approved March 9th, 1869, entitled An act to amend the charter of the Dixon, Peoria and Hannibal Railway Company.,

An act to amend the charter of the Dixon, Peoria and Hannibal Railway Company. In force March 9, 1869.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That an act entitled "An act to incorporate the Dixon, Peoria and Hannibal Railroad Company," approved March 5, 1867, be so amended as to authorize the several counties in which any part of said road may be hereafter located to subscribe or make donations under the provisions of said act to the capital stock of said company in any amount not exceeding two hundred thousand dollars for any such county, and that the
69 townships, cities, and incorporated towns in any such county be, and are hereby, authorized to subscribe or make donations, under the provisions of said act, to the capital stock of said company in any amount not exceeding one hundred thousand dollars for any such township, city, or incorporated town.

§ 2. This act shall be in force from and after its passage.

Approved March 9, 1869.

To the admission of which evidence defendant then and there, by its attorneys, objected, and the same was admitted by the court, subject to objections to be afterward considered.

Plaintiff then offered in evidence the following:

Copy.

An act to legalize a certain election therein named. Originated in the House. James P. Root, clerk.

SECTION I. Be it enacted be the people of the State of Illinois, represented in the General Assembly, That a certain election held in the township of Elmwood, in Peoria county, on the sixteenth day of March, anno Domini one thousand eight hundred and sixty-nine, at which a majority of the legal voters in said township, in special town meeting, voted to subscribe for and take forty thousand dollars of the capital stock of the Dixon, Peoria and Hannibal Railroad Company over and above the thirty-five thousand dollars which was on the same day subscribed for and taken in accordance with
70 the provisions of the charter of said company, is hereby legalized and confirmed and is declared to be binding upon said township, and the said forty thousand dollars, when subscribed according to the conditions of said vote, may be collected from said township in the same manner as if the said subscription had been made under the provisions of said charter.

SECTION II. This act shall be deemed a public act, and shall take effect and be in force from and after its passage.

F. CORWIN,
Speaker of House of Represen-atives.
J. DOUGHERTY,
Speaker of the Senate.

Approved April 17th, 1869.

JOHN M. PALMER, *Governor.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of State of Illinois, do hereby certify that the foregoing is a true copy of an act to legalize a certain election therein named, the original of which is now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 28th day of July, A. D. 1887.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

71 To the admission of which in evidence defendant, by its attorneys, then and there objected, and the same was admitted by the court subject to objections to be afterward considered.

Plaintiff then produced before the jury and offered to read in evidence twelve bonds, numbered from fifty-nine to seventy, inclusive, and all alike except as to number, one of which bonds, with the certificate of registration on the back thereof, is in words and figures as set out in plaintiff's declaration; to the admission of which evidence defendant, by its attorneys, then and there objected, and said evidence was admitted by the court subject to objections to be afterward considered.

Plaintiff then offered in evidence one hundred and thirty-two coupons, all alike except as to their number and the date of their maturity, numbered from fifty-nine (59) to seventy, inclusive, and purporting to fall due as follows: One of each of said numbers, twelve in all, on the first day of July of each year from 1875 to 1885, inclusive, one of which coupons is in words and figures as set out in plaintiff's declaration; to the admission of which evidence defendant, by its attorneys, then and there objected, and the same was admitted by the court subject to objections to be thereafter considered.

72 Plaintiff then offered in evidence a certified copy from the office of the auditor of public accounts of the State of Illinois of the affidavit of the supervisor of the township of Elmwood, upon which said auditor registered the bonds of defendant, which, with said certificate, is as follows:

STATE OF ILLINOIS,
COUNTY OF PEORIA, *February 15th*, 1870.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

SIR: I herewith transmit to you for registration in your office, under the provisions of the act entled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being seventy-five in number, dated April 27th, 1869, amounting to ($75,000) seventy-five thousand dollars, payable on the 1st day of July, 1889, and bearing interest at the rate of 10 per centum per annum, payable

annually. These bonds are issued by the town of Elmwood, in the county of Peoria and State of Illinois, to the bearer and in aid of Dixon, Peoria and Hannibal R. R. Co., under and by authority of the provisions of act to incorporate the Dixon, Peoria and Hannibal Rail R. Co., approved March 5th, 1867, & amended
73 March 7th, 1869, & also an act to legalize a certain election then named, approved April 17, 1869, and by a vote of the people of said township at an election held on the 16th March, 1869.

And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and entitle them to the benefits of the said act last referred to have been fully complied with, to the best of my knowledge and belief.

S. F. JONES,
Supervisor of Elmwood, Peoria County.

Subscribed and sworn to by the said S. F. Jones before me this 15th day of February, A. D. 1870.

[NOTARIAL SEAL.] SAMUEL M. FARRAR,
Notary Public.

Endorsed: Filed March 15th, 1870. C. E. Lippincott, auditor public accounts.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *June 9th*, 1883.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of S. F.
74 Jones, as supervisor of Elmwood township, in relation to registration of bonds issued by said town to the Dixon, Peoria & Hannibal Railroad Co., now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.] CHAS. P. SWIGERT,
Auditor of Public Accounts.

Also a transcript of registration from the office of said auditor in words and figures as follows:

(See table.)

76 Plaintiff also offered evidence tending to prove that he bought the said bonds in the year 1872, in good faith and without notice of any defences to same, and paid therefor ninety-five cents on the dollar of their par value, and had been the owner thereof ever since and of all the coupons of said bonds falling due in July, 1872, and since, and that said plaintiff is and was at the commencement of this suit a citizen of Massachusetts.

And thereupon the defendant, to maintain and prove the issue on

its part, read in evidence a copy of so much of the journals of the Senate and House of the General Assembly of the State of Illinois as relates to the passage of the said act of April 17th, 1869, which copy is certified by the secretary of state of Illinois to be correct and, together with said certificate, is in words and figures as follows:

Journal of the House of Represen-atives.

MONDAY, *January*, 1869.

In accordance with the provisions of the constitution of the State of Illinois, the twenty-sixth General Assembly of said State convened, in their first session, at the state house in the city of Springfield, on Monday, the fourth day of January, A. D. 1869.

The House was called to order by Mr. Bond.

* * * * * * *

FRIDAY, *April* 16, 1869.

77 * * * * * * *

Mr. Phelps, by leave, introduced a bill (H. B. No. 1599) for "An act to legalize a certain election therein named;" which was read a first time and ordered to a second reading.

On motion of Mr. Phelps, the rule was dispensed with, the bill read a second time and ordered to a third reading.

* * * * * * *

A bill (H. B. No. 1599) for an act to legalize certain elections therein named was taken up and, on motion of Mr. Phelps, the rule was dispensed with, the bill read a third time, and the question being, "Shall this bill pass?" it was decided in the affirmative—yeas, 67; nays, 00.

Those voting in the affirmative are: Messrs. Bailey, Bond, Bothwell, Brookhart, Burgess, Burke, Burnett, Calaway, Casey, Collins, Cook, of Lake; Cook, of Sangamon; Cooper, Coy, Deitz, Denison, Dinsmore, Downing, Elliott, Fuller, Gale, Gaylord, Gilmore, Green, Gundlach, Halley, Hanna, Hopkins, Jasper, Kerr, Knickerbocker, Landrigan, Laning, Marsh, McCutcheon, Merritt, Miller, of St. Clair; Milttower, Morgan, Morse, Munson, Nase, Parker, Payne, Perry,
Phelps, Porter, Reed, Ross, of St. Clair; Ross, of Fulton; Rush,
78 Saltonstall, Scroggs, Smith, Stanley, Strawn, Sumner, Swigart, Talbott, Taylor, Voris, Whiting, Wylie, Willis, Woodson, Young, Mr. Speaker.

Ordered, That the title be as aforesaid, and that the clerk inform the Senate thereof and ask their concurrence therein.

* * * * * * *

SATURDAY, *April* 17, 1869.

* * * * * * *

A message from the Senate by Mr. Paddock:

Mr. SPEAKER: I am directed to inform the House of Representa-

annually. These bonds are issued by the town of Elmwood, in the county of Peoria and State of Illinois, to the bearer and in aid of Dixon, Peoria and Hannibal R. R. Co., under and by authority of the provisions of act to incorporate the Dixon, Peoria and Hannibal Rail R. Co., approved March 5th, 1867, & amended
73 March 7th, 1869, & also an act to legalize a certain election then named, approved April 17, 1869, and by a vote of the people of said township at an election held on the 16th March, 1869.

And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and entitle them to the benefits of the said act last referred to have been fully complied with, to the best of my knowledge and belief.

S. F. JONES,
Supervisor of Elmwood, Peoria County.

Subscribed and sworn to by the said S. F. Jones before me this 15th day of February, A. D. 1870.

[NOTARIAL SEAL.] SAMUEL M. FARRAR,
Notary Public.

Endorsed: Filed March 15th, 1870. C. E. Lippincott, auditor public accounts.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *June 9th*, 1883.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of S. F.
74 Jones, as supervisor of Elmwood township, in relation to registration of bonds issued by said town to the Dixon, Peoria & Hannibal Railroad Co., now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.] CHAS. P. SWIGERT,
Auditor of Public Accounts.

Also a transcript of registration from the office of said auditor in words and figures as follows:

(See table.)

76 Plaintiff also offered evidence tending to prove that he bought the said bonds in the year 1872, in good faith and without notice of any defences to same, and paid therefor ninety-five cents on the dollar of their par value, and had been the owner thereof ever since and of all the coupons of said bonds falling due in July, 1872, and since, and that said plaintiff is and was at the commencement of this suit a citizen of Massachusetts.

And thereupon the defendant, to maintain and prove the issue on

its part, read in evidence a copy of so much of the journals of the Senate and House of the General Assembly of the State of Illinois as relates to the passage of the said act of April 17th, 1869, which copy is certified by the secretary of state of Illinois to be correct and, together with said certificate, is in words and figures as follows:

Journal of the House of Represen-atives.

MONDAY, *January*, 1869.

In accordance with the provisions of the constitution of the State of Illinois, the twenty-sixth General Assembly of said State convened, in their first session, at the state house in the city of Springfield, on Monday, the fourth day of January, A. D. 1869.

The House was called to order by Mr. Bond.

* * * * * * *

FRIDAY, *April* 16, 1869.

77 * * * * * * *

Mr. Phelps, by leave, introduced a bill (H. B. No. 1599) for "An act to legalize a certain election therein named;" which was read a first time and ordered to a second reading.

On motion of Mr. Phelps, the rule was dispensed with, the bill read a second time and ordered to a third reading.

* * * * * * *

A bill (H. B. No. 1599) for an act to legalize certain elections therein named was taken up and, on motion of Mr. Phelps, the rule was dispensed with, the bill read a third time, and the question being, "Shall this bill pass?" it was decided in the affirmative—yeas, 67; nays, 00.

Those voting in the affirmative are: Messrs. Bailey, Bond, Bothwell, Brookhart, Burgess, Burke, Burnett, Calaway, Casey, Collins, Cook, of Lake; Cook, of Sangamon; Cooper, Coy, Deitz, Denison, Dinsmore, Downing, Elliott, Fuller, Gale, Gaylord, Gilmore, Green, Gundlach, Halley, Hanna, Hopkins, Jasper, Kerr, Knickerbocker, Landrigan, Laning, Marsh, McCutcheon, Merritt, Miller, of St. Clair; Milttower, Morgan, Morse, Munson, Nase, Parker, Payne, Perry, Phelps, Porter, Reed, Ross, of St. Clair; Ross, of Fulton; Rush,
78 Saltonstall, Scroggs, Smith, Stanley, Strawn, Sumner, Swigart, Talbott, Taylor, Voris, Whiting, Wylie, Willis, Woodson, Young, Mr. Speaker.

Ordered, That the title be as aforesaid, and that the clerk inform the Senate thereof and ask their concurrence therein.

* * * * * * *

SATURDAY, *April* 17, 1869.

* * * * * * *

A message from the Senate by Mr. Paddock:

Mr. SPEAKER: I am directed to inform the House of Representa-

tives that the Senate has concurred with them in the passage of bills of the following titles, to wit:

* * * * * * *

House bill No. 1599, for an act to legalize a certain election therein named.

* * * * * * *

Mr. Frew, from the joint committee on enrolled and engrossed bills, begs leave to report that a bill of the following title has been correctly enrolled, and on this 17th day of April, 1869, laid before the Governor for his approval, to wit, House bill No. 1599, an act to legalize a certain election therein named.

* * * * * * *

TUESDAY, *April 20th*, 1869.

* * * * * * *

79 A message from the Governor by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the Governor to inform the House of Representatives that he has approved and signed bills of the following titles, viz:

* * * * * * *

H. B. No. 1599, an act to legalize certain elections therein named.

Journal of the Senate.

At a General Assembly of the State of Illinois begun and held in the city of Springfield, on Monday, the 14th day of January, in the year of our Lord one thousand eight hundred and sixty-nine, being the first session of the twenty-sixth General Assembly; the Hon. Wm. Bross, Lieutenant Governor of the State of Illinois and speaker of the Senate, appeared at 12 o'clock m., took the chair, and called the Senate to order.

* * * * * * *

FRIDAY, *April 16th*, 1869.

* * * * * * *

A message from the House of Representatives by Mr. Halsted:

Mr. SPEAKER: I am directed to inform the Senate that the House of Representatives has passed bills of the following titles, to wit:

* * * * * * *

80 House bill No. 1599, for an act to legalize a certain election therein named.

* * * * * * *

On motion, the rule was unanimously dispensed with and House bill No. 1599, for an act to legal- a certain election therein named, was taken up, read a first time, and ordered to a second reading.

On motion of Mr. Epler, the rule was unanimously dispensed with, the bill read a second time and ordered to a third reading.

* * * * * * *

On motion, the rule was unanimously dispensed with and House bill No. 1599, for an act to legalize certain elections therein named, was read a third time, and the question being, "Shall this bill pass?" it was decided in the affirmative—yeas, 20; nays, 2.

Those voting in the affirmative are: Messrs. Addams, Boyd, Casey, Chittenden, Crawford, Dore, Flagg, Fort, Harlan, McManus, Munn, Nicholson, Patton, Pinckney, Sheperd, Snapp, Strevell, Tincher, Turney, Woodson.

Those voting in the negative are: Messrs. Fuller, Ward.

Ordered, That the title be as aforesaid, and that the secretary inform the House of Representatives thereof.

* * * * * * *

81 TUESDAY, *April 20th*, 1869.

* * * * * * *

Mr. Fort, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been, on the 16th day of April, 1869, laid before the Governor for his approval, viz:

* * * * * * *

House bill No. 1599, for an act to legalize certain elections therein named.

* * * * * * *

A message from the Governor by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the Governor to inform the Senate that he has approved and signed bills of the following titles, viz:

* * * * * * *

House bill No. 1599, an act to legalize certain election- therein named.

UNITED STATES OF AMERICA, } 88:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of the journals of the House of Represen-atives and the Senate of the 26th General Assembly of the State of Illinois of all the proceedings had on the passage of a bill, House bill No. 1599, for "An act to legalize
82 a certain election therein named," now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of the State, at the city of Springfield, this 4th day of June, A. D. 1887.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

Which was all the evidence offered by either party on the issue submitted to the jury on said trial.

And thereupon said defendant, by its attorneys, moved the said court to exclude from the consideration of the jury said act of March

9, 1869, because the same was immaterial and irrelevant, but the court denied said motion; to which ruling of the court in denying said motion defendant, by its attorneys, then and there excepted.

And thereupon defendant, by its attorneys, moved the court to exclude from the consideration of the jury said act of April 17th, 1869, said alleged bonds and said coupons and each and every of the same, but the court denied said motion to exclude said act, or said bonds, or said coupons; or either or any of them; to which ruling of the court in denying said motion and allowing said act, said bonds, and said coupons and each and all of them to be
83 considered in evidence by said jury defendant then and there excepted.

And thereupon the defendant asked the court to give the following instructions to the jury:

The court is requested to instruct the jury in this case as follows:

First. That under the issue in this case the plaintiff is required to show, on competent proof, that he was the owner of the coupons sued on at the commencement of this suit; that they were taken from bonds in fact executed by the defendant and issued in accordance with law; and if they believe that the evidence fails to establish either of said facts as to any of said coupons they will find for the defendant as to such coupons, and if as to all of said coupons they will find for the defendant generally.

Second. That unless the jury believe from the evidence that the Dixon, Peoria and Hannibal railroad was located in the town of Elmwood subsequent to March 9th, 1869, the date of the passage of "An act to amend the charter of the Dixon, Peoria and Hannibal Railway Company," they will find for the defendant, and no evidence has been offered to the jury upon that subject.

Third. That an act entitled "An act to legalize a certain election therein named," approved April 17th, 1869, was not constitutionally enacted and is not a valid statute.

84 Fourth. That if said act approved April 17th, 1869, were valid it conferred no authority on the defendant to issue the bonds from which the coupons sued on in this case were taken.

Fifth. That the plaintiff has failed to show that the defendant was authorized by law to issue the bonds from which the coupons sued on were taken.

Sixth. That if the jury believe from the evidence that the plaintiff purchased the bonds, with the coupons attached, upon which this suit is brought, subsequent to the decisions of the supreme court of Illinois in 1871, in the cases of Silliman *vs.* Marshal and Wiley *vs.* Silliman, reported in 61 Ill., 226, and 62 Ill., 170, holding the said act of April 17th, 1869, invalid, they will find for the defendant, unless they further believe from the evidence that he derived title to the same through some person who was a *bona fide* holder and owner of said bonds before said decisions of the supreme court of Illinois.

Seventh. And the jury are further instructed that the burden of proof is upon the plaintiff to show that he purchased said bonds from such *bona fide* holder and owner under the circumstances set forth in the next preceding instruction.

85 But the court refused to give each of said instructions to the jury; to which decision of the court in refusing to give the same and each of them to the jury defendant, by its attorneys, then and there excepted, but rendered an opinion in said cause as follows, to wit:

U. S. Circuit Court, N. D. of Illinois.

A. W. Dows *v.* Town of Elmwood.

Bunn, *J.* (orally):

The two objections in this case which seem to have most substance are, first, that the bonds of the town of Elmwood, issued to the railroad company in the month of April, 1869, are void, for the reason that there was a failure to comply with the Illinois constitutional provision of 1848, that every local and private law shall embrace but one subject, and that subject shall be expressed in the title; and, second, that the bonds issued by the town exceeded the authority contained in the law of Illinois under which they were issued, in that they run over twenty years, which is the limit provided by the law.

The court will consider these objections in their order. There are other objections made and discussed, but I desire only to notice these two objections to the validity of the bonds. The bonds
86 are legal in form and recite that they are issued in pursuance of certain statutes of the State of Illinois under and by virtue of which the town bonds were voted by the legal electors of the town of Elmwood, and there are no questions of fact in the case to be submitted to the jury, and it becomes the duty of the court to decide the questions of law and direct a verdict in the case either for the plaintiff or defendant.

First, in regard to the objection, which has been strenuously urged and ably argued in behalf of the defendant, that the law of April 17, 1869, which legalized the town meeting held in the town of Elmwood in the month of March preceding, was not legally or constitutionally passed by the Legislature of Illinois, because the provision, before referred to, of the constitution of Illinois was not complied with. The title of the act is "An act to legalize a certain election therein named," and it is insisted on the part of the defendant that this is too general and indefinite to be a substantial compliance with the constitution.

Many cases have been cited upon this subject which seem to be not wholly in point, but I am of opinion that the case of Montclair *v.* Ramsdell, 107 U. S., 147, should rule the case at bar,
87 there being no decision of the supreme court of Illinois holding the act or any other similar act invalid for such reason.

In that case Justice Harlan, delivering the opinion of the court, quotes with approval the language of the supreme court of New Jersey in State *v.* The Town of Union, 33 N. J. L., 350, as follows: "The purpose of this constitutional provision was to prevent surprise upon legislators by the passage of bills the object of which is not indicated by their titles, and also to prevent the combination of two

or more distinct and unconnected matters in the same bill." Further said the court: "It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title. The unity of the object must be sought in the end which the legislative act proposes to accomplish. The degree of particularity which must be used in the title of an act rests in legislative discretion and is not defined by the constitution."

I think the principle enunciated in that case, which is cited with approval by the Supreme Court of the United States, is applicable to the case at bar. The title to the act is "An act to legalize the proceedings of a certain town election." There is but one subject embraced in the act, and that subject is expressed in the title.

88 It is true it is not given with so great particularity as was possible, but it is not misleading. The description of the subject of the act as stated in the title is apt and accurate, and the only possible objection is that it is too general, in that it does not locate the election by designating the time and place, and the question is whether this court, in advance of any decision on the subject by the Illinois courts, ought to say that the act is unconstitutional and void. Now, this court will not undertake to decide that the act of the Legislature of a State is unconstitutional and void unless it is clearly and palpably so. So long as the title of the act states the purpose or subject which is embodied in the act itself, although in very general terms, I think it is a substantial compliance with the provisions of the constitution. Mr. Justice Harlan, in Montclair *v.* Ramsdell, in commenting upon this and other cases, says: "Upon the authority of these decisions and upon the soundest principles of constitutional construction, we are of opinion that the objection taken to the act of April 15, 1868, as being (when construed as we have indicated) in conflict with the constitution of New Jersey, cannot be sustained.

89 The powers which the township of Montclair is authorized to exert, however varied or extended, constitute, within the meaning of the constitution, one object, which is fairly expressed in a title showing the legislative purpose to establish a new or independent township. It is not intended by the constitution of New Jersey that the title to an act should embody a detailed statement nor be an index or abstract of its contents.

The one general object, the creation of an independent municipality, being expressed in the title, the act in question properly embraced all the means or instrumentalities to be employed in accomplishing that object. As the State constitution has not indicated the degree of particularity necessary to express in its title the one object of an act, the courts should not embarrass legislation by technical interpretations based upon mere form or phraseology.

The objections should be grave and the conflict between the statute and the constitution palpable before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object or, if but one object, that it was not sufficiently expressed by the title."

I think the case at bar comes within the reasoning and spirit of this case.

Upon the other point, that the bonds are not in compliance
90 with law, in this, that they run longer than twenty years, which was the limit fixed by the act of March, 1869, and 1867, I am of the opinion upon that question also that the objection made by the defendant should be overruled. I think the bonds are in substantial compliance with the law, and that this case should be ruled by Township of Rock Creek *v.* Strong, 96 U. S., 271. The facts in that case were about the same as in this, the only difference being that the Supreme Court in the former say it does not appear from the record whether the bonds were issued and delivered on the day of their date or not. In the case at bar it appears from the declaration of the plaintiff that the bonds were dated April 27, 1869, and that they were issued and delivered on that day. It also appears in the evidence that they ran twenty years from July 1st following and drew interest from that date; so that there was a lapse of about two months between the time of the issue and delivery of the bonds and the time when they went into effect so as to draw interest.

It is natural enough that a town and railroad company in a transaction of that kind should have a little time to get the bonds issued and delivered and put in the market, and the transaction perfected for which the vote of the town meeting was taken, before the bonds should begin to draw interest in the hands of the holder, and
91 it would not seem that two months was an unreasonable time for that purpose. It is true they might have been dated ahead. Suppose they had been dated on the 1st of July instead of the 27th of April, the case would not be different, in my judgment, from what it is now. They did not draw interest until that time, and only ran twenty years from the time they commenced to draw interest. I do not think the issuing and delivering of the bonds two months previous to the time the twenty years began to run, when they began to draw interest, is a material fact in the case.

In the case referred to in 96 U. S. the bonds were issued and dated Sept. 10, 1872, and made payable thirty years from Oct. 15, 1872, with interest from that time. They were not registered in the office of the auditor of State until Oct. 17, 1872; so in that case there was one month and five days between the date of the issue of the bonds and the time when the thirty years commenced to run, when they began to draw interest. In this case the interval was a little longer, but the cases, it seems to me, rest upon the same general principles. It is true the court says it did not appear when they were issued and delivered. In this case they were issued on the day of their date, and in the case referred to, in the absence of
92 evidence of the time of delivery, the presumption would have been that they were issued and delivered on the day of their date. If that be so the cases are mainly the same. But, however that may be, I do not think two months and three days between the date of the bonds and the time they commenced to draw interest in the hands of the persons purchasing them is a material fact in the case. How it would have been if the bonds had been

drawn so as to run and draw interest for any number of years more than the time specified in the act the court is not called upon to determine.

As to the general question of the validity of these bonds, I think the case is ruled by Bolles *v.* Brimfield, 120 U. S., 759. That is the latest expression of the Supreme Court upon the question of the validity of a law of Illinois identical with this, and my judgment is it should be decisive of the validity of these bonds, and I have no doubt of the correctness of the principle which the Supreme Court has adopted in that and other cases. It seems to me very clear, on principle as well as upon the authorities, that wherever the Legislature has power to authorize the different municipalities of the State to vote and issue bonds under authority of an act of the Legislature, if the people vote those bonds voluntarily
93 and the action of the electors is afterwards confirmed and approved by the Legislature, and their acts made binding upon the town by an express act ratifying their action, it stands precisely on the same footing as though there had been an enabling act in advance. I do not see why the vote of the town at a regular meeting and subsequent ratification of the Legislature does not cover the whole question of power just as fully, to all intents and purposes, and in the same manner substantially, as though the act had been authorized by the Legislature in the first instance. That is what the Supreme Court decides in this case, in 120 U. S. It is true in some other cases the Supreme Court follow the decisions of the State courts upon those questions, where those courts have held a law unconstitutional before rights have become vested, but, as far as anything appears to the court now, that case is decisive of the one at bar, and I think it is the duty of the court to direct the jury to find a verdict for the plaintiff for the amount of the coupons of which he was the owner at the time of the commencement of this suit.

And thereupon the court instructed the jury to find a verdict for the plaintiff and assess his damages at the amount of the principal of said coupons, with interest at six per centum per annum
94 from the time at which they, respectively, became due by their terms; to the giving of which instruction to the jury defendant, by its attorneys, then and there excepted.

And thereupon the jury rendered a verdict against the defendant and assessed the plaintiff's damages at the sum of $19,272.00.

Whereupon the defendant, by its attorneys, then and there moved the court to set aside the verdict so rendered and grant a new trial of this cause, and filed the following reasons in writing for said motion:

UNITED STATES OF AMERICA, } ss.:
Northern District of Illinois, }

In the United States Circuit Court, Northern District of Illinois.

AMOS W. DOWS *vs.* ELMWOOD.

Assumpsit.

Now comes the said defendant and moves the court to set aside the verdict entered herein and grant a new trial for the reasons following:

First. Because the court permitted improper evidence to go to the jury.

Second. Because the court overruled the motion of the defendant to exclude from the consideration of the jury the bonds and coupons offered in evidence, the act of the General Assembly of the State of Illinois approved March 9, 1869, and what purported to be
95 an act of the General Assembly of the State of Illinois entitled "An act to legalize a certain election therein named," and each of them.

Third. Because the court refused to give to the jury the instructions asked by the defendant and each and every of them.

Fourth. Because the court instructed the jury to find the verdict for the plaintiff.

LYMAN TRUMBULL,
Def't's Att'y.

Endorsed: Filed March 2, 1888. Wm. H. Bradley, clerk.

But the court denied the motion; to which decision of the court in denying such motion the defendant, by its attorneys, then and there excepted.

And thereupon defendant, by its attorneys, moved the court in arrest of judgment, which motion the court overruled and gave judgment on the verdict against the defendant; to which decision of the court in overruling such motion the defendant, by its attorneys, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record the defendant prays that the same may be signed and sealed by the judge of this court pursuant to law, which is done accordingly this thirtieth day of March, A. D. 1888.

R. BUNN, *Judge.* [SEAL.]

96 Endorsed: Filed March 30, 1888. Wm. H. Bradley, clerk.

Afterwards, to wit, on the ninth day of April, 1888, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Township of Elmwood, in the county of Peoria and State of Illinois, as principal, and Albertus Y. Bartholemew and John Heptonstall, as sureties, are held and firmly bound unto Amos W. Dows in the full and just sum of five hundred dollars, to be paid to the said Amos W. Dows, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in
97 in said court between the said Amos W. Dows and the said Township of Elmwood, on the twenty-seventh day of March, A. D. 1888, a judgment was rendered against the said Township of Elmwood for the sum of nineteen thousand two hundred and seventy-two dollars and costs of suit, and the said Township of Elmwood having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Amos W. Dows, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Township of Elmwood shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE TOWN OF ELMWOOD, [SEAL.]
By A. Y. BARTHOLOMEW, *Supervisor.*
ALBERTUS Y. BARTHOLOMEW. [SEAL.]
JOHN HEPTONSTALL. [SEAL.]

Approved, not to operate as a supersedeas.
H. W. BLODGETT, *Judge.*

Endorsed: Filed April 9, 1888. Wm. H. Bradley, clerk.

98 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all proceedings had in said court in the cause wherein Amos W. Dows is the plaintiff and The Town of Elmwood is the defendant as the same appear- from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at my office, in Chicago, in said district, this twenty-second day of May, 1888.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

99 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the Circuit Court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you, in said circuit court, between Amos W. Dows, plaintiff, and Town of Elmwood, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Town of Elmwood, defendant, as by its complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1888, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Samuel F. Miller, acting Chief Justice of the Supreme Court of the United States, this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 112th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855]

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. Town of Elmwood, plaintiff in error, *vs.* Amos W. Dows, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

100 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Amos W. Dows, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D., 1888, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the Town of Elmwood is

plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 9th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

H. W. BLODGETT, *Judge.*

Service of above accepted.

THOMAS S. McCLELLAND,
Counsel for Amos W. Dows.

[Endorsed:] Supreme Court of the United States. Dows *vs.* Town of Elmwood Citation to October term, A. D. 1888.

101 *Assignment of Errors.*

TOWN OF ELMWOOD, Plaintiff in Error,
v.
AMOS W. DOWS, Defendant in Error.

Error to the circuit court of the United States for the northern district of Illinois.

And now comes the said plaintiff in error and says that in the record and proceedings aforesaid and in the judgment aforesaid there is manifest error, and for cause of error it assigns the following:

First. That said circuit court sustained the demurrer to the pleas of the said plaintiff in error when it should have overruled the same and sustained said demurrer to the declaration of the said defendant in error.

Second. That said circuit court admitted improper evidence to go to the jury and overruled the motion of plaintiff in error to exclude the same.

102 Third. That said circuit court refused all and each of the instructions asked by plaintiff in error.

Fourth. That said circuit court directed the jury to find a verdict for defendant in error.

Fifth. That said circuit court overruled the motion in arrest of judgment and entered judgment in favor of said defendant in error.

For which and other errors apparent on said record said plaintiff in error prays that said judgment may be reversed.

LYMAN TRUMBULL &
H. B. HOPKINS,
Att'ys for Plaintiff in Error.

Endorsed on cover: N. Illinois C. C. U. S. No. 1026. The Town of Elmwood, plaintiff in error, *vs.* Amos W. Dows. Filed June 22, 1888.